



DATE ISSUED: JAN 24, 1990
CASE NO. 88-INA-276

IN THE MATTER OF THE APPLICATION
FOR AN ALIEN EMPLOYMENT CERTIFI-
CATION UNDER THE IMMIGRATION AND
NATIONALITY ACT

LIGNOMAT USA, LTD.
Employer

on behalf of

ULRICH PAUL HEIMERDINGER
Alien

NAHUM LITT
Chief Judge

ORDER DENYING MOTION FOR RECONSIDERATION

On October 24, 1989, this Board issued its Decision and Order affirming the Certifying Officer's denial of certification in this case. By letter dated November 25, 1989, the Employer moved that this matter be reconsidered.¹ By letter dated December 8, 1989, the American Immigration Lawyers Association (AILA) seeks amicus curiae status. AILA also seeks oral argument.

We must decide at the outset whether the requests are timely. The Employer's motion was mailed on the 32nd day following issuance of the decision. AILA's motion was mailed over six weeks after the issuance of the decision.

The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges is found at 29 C.F.R. Part 18. Section 18.1(a) of that Part provides:

¹ This request was based on the notice included at the conclusion of the Decision and Order, informing the Employer that it could petition for full Board review within 30 days of the issuance of the Decision and Order. This notice, however, was in error. It is self-evident that a petition to review a decision issued by the Board sitting en banc, as this decision was, cannot be correctly called a Petition for En Banc Review. As such, the Employer's request is properly termed, and will be treated as, a Motion for Reconsideration.

The Rules of Civil Procedure for the District Courts of the United States shall be applied in any situation not provided for or controlled by these rules, or by any statute, executive order or regulation.

Neither the Rules of Practice found at Part 18, nor any regulation found at 20 C.F.R. §656, the regulations governing the labor certification procedure, discuss time limits for motions for reconsideration. As such, Section 18.1(a) requires the Board to look to the Rules of Civil Procedure for Guidance.

Federal Rule of Civil Procedure 59(e) provides:

A motion to alter or amend the judgment shall be served not later than 10 days after entry of judgment.

This rule applies to a motion for reconsideration. Thus, the Part 18 regulations require the Board to apply the 10 day limitation of that rule. Accordingly, in adherence to the Federal Rules, we hold that any motion to reconsider a decision and order, as opposed to a petition for en banc review, must be served within 10 days of issuance of the decision and order.²

It would be inequitable, however, to apply this rule here. The notice at the end of the Decision and Order in this case informed the Employer that it had 30 days to request review by the full Board. Although this notice was in error, as the full Board had already reviewed the case, the Employer's reliance on this notice was reasonable. We therefore entertain its Motion for Reconsideration on the merits.

AILA's motion to intervene as amicus curiae is granted. We note that AILA was unlikely to have notice of the issue involved in this case until issuance of the en banc decision. Moreover, we are mindful that AILA may wish to participate in any further proceedings that may take place in this matter. Future requests, however, must comply with the rules for reconsideration set out above.

² Although the Board has specified that petitions for en banc review can be filed within 20 days of issuance of a decision and order, we have never specified the time limits within which a motion for reconsideration must be filed. In In re K Super KQ-1540 A.M., 88 INA 397 (September 29, 1989), we held that a motion for reconsideration filed two months after the issuance of the decision and order which does not show good cause for the delay in filing should be denied as untimely. In In re J. Michael and Patricia Solar, 88 INA 56 (November 30, 1989), we held that a motion for reconsideration filed six weeks after the issuance of the decision and order was untimely. Consequently, we take this opportunity to specify the time limits within which a motion for reconsideration must be filed.

Upon consideration of the arguments presented in the Employer's and AILA's motions, we find no basis for altering the original Decision and Order in this case. Accordingly, the Motions for Reconsideration are denied.

For the Board:

NAHUM LITT
Chief Administrative Law Judge